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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 HSBC BANK USA, et al.,

8 Plaintiff(s),

9 v.

10 LEE FAMILY PROPERTIES, LLC.
11 SERIES XVII, et al,

12 Defendant(s).

Case No. 2:16-CV-644 JCM (NJK)

ORDER

13
14 Presently before the court is plaintiff HSBC Bank USA, National Association's
15 ("plaintiff") motion for reconsideration. (ECF No. 79). Defendants have not filed a response, and
16 the time to do so has passed.

17 **I. Facts**

18 This case involves a dispute over real property located at 8101 West Flamingo Road #1051,
19 Las Vegas, Nevada (the "property"). (ECF No. 1).

20 On February 15, 2005, Leticia R. McCoy purchased the property pursuant to a grant,
21 bargain, sale deed from Copper Sands Homeowners Association, Inc. ("the HOA"). *Id.* McCoy
22 obtained a loan in the amount of \$117,600 from GreenPoint Mortgage Funding, Inc.
23 ("GreenPoint") to finance the purchase. *Id.* The loan was secured by a deed of trust recorded on
24 February 28, 2005. *Id.*; (ECF No. 1-6). The deed of trust lists GreenPoint as the lender and
25 Mortgage Electronic Registration Systems, Inc. ("MERS") as the beneficiary "solely as a nominee
26 for Lender and Lender's successors and assigns." (ECF No. 1- 6). On September 24, 2011, MERS
27 assigned its interest in the deed of trust to Bank of America, N.A. ("BOA"), which was recorded
28 on October 6, 2011. (ECF No. 1-8).

1 On January 13, 2012, Alessi & Koenig, LLC (“Alessi”), acting on behalf of the HOA,
2 recorded a notice of delinquent assessment lien, stating an amount due of \$1,196.50. (ECF No. 1-
3 10). On June 25, 2012, Alessi, acting on behalf of the HOA, recorded a notice of default and
4 election to sell, stating an amount due of \$3,101. (ECF No. 1-11).

5 On July 23, 2012, Miles, Bauer, Bergstrom & Winters LLP (“MBBW”), acting on behalf
6 of BOA, sent Alessi a letter requesting a payoff ledger. (ECF No. 57). In response, Alessi
7 demanded \$3,988.70, but did not include a statement of the super-priority lien amount. *Id.* The
8 payoff demand included a breakdown of past due assessments, fees, and costs, and an account
9 ledger from the HOA showing that the monthly assessment on the property was \$164.45.

10 Based on the monthly assessment amount identified in the ledger, BOA calculated the sum
11 of nine months of common assessments and determined that the superpriority portion of the lien
12 totaled 1,480.05. *Id.* Nevertheless, BOA sent a check to the HOA in the sum of \$2,269.77 on
13 August 16, 2012, representing the sum of nine months of common assessments and what BOA
14 believed to be “reasonable collection costs.” *Id.*; *see also* (ECF No. 57-3). The HOA, through
15 Alessi, did not accept or cash the check. *Id.*

16 On January 10, 2013, BOA assigned its interest in the deed of trust to plaintiff via a
17 corporate assignment of deed of trust, which was recorded on January 11, 2013. (ECF No. 1-9).

18 On July 31, 2013, Alessi recorded a notice of trustee’s sale, stating an amount due of
19 \$7,507.83 and an anticipated sale date of August 28, 2013. (ECF No. 1-12). On October 2, 2013,
20 the HOA foreclosed on the property. (ECF No. 1). The HOA purchased the property at the
21 foreclosure sale for \$8,045.83. *Id.* A foreclosure deed in favor of the HOA was recorded on May
22 27, 2014. (ECF No. 1-13). Also on May 27, 2014, the HOA sold its interest to defendant Lee
23 Family Properties, LLC, Series XVII via quitclaim deed. (ECF No. 1-14).

24 On March 23, 2016, plaintiff filed the underlying complaint, alleging claims for, *inter alia*,
25 quiet title (ECF No. 1). In the instant motion, plaintiff asks the court to reconsider its March 23,
26 2018, order denying plaintiff’s motion for summary judgment based upon an intervening change
27 in controlling case law from the Nevada Supreme Court. (ECF No. 79). *See* (ECF No. 72).

28 . . .

1 **II. Legal Standard**

2 A motion for reconsideration “should not be granted, absent highly unusual
3 circumstances.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880
4 (9th Cir. 2009). “Reconsideration is appropriate if the district court (1) is presented with newly
5 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3)
6 if there is an intervening change in controlling law.” *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d
7 1255, 1263 (9th Cir. 1993); *see* Fed. R. Civ. P. 60(b).

8 Rule 59(e) “permits a district court to reconsider and amend a previous order,” however
9 “the rule offers an extraordinary remedy, to be used sparingly in the interests of finality and
10 conservation of judicial resources.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)
11 (internal quotations omitted). A motion for reconsideration is also an improper vehicle “to raise
12 arguments or present evidence for the first time when they could reasonably have been raised
13 earlier in litigation.” *Marlyn Nutraceuticals*, 571 F.3d at 880.

14 **III. Discussion**

15 Plaintiff argues that the court should reconsider its prior order denying plaintiff’s motion
16 for summary judgment because it properly tendered the superpriority portion of the HOA’s lien on
17 August 16, 2012. *See* (ECF No. 90). In light of the Nevada Supreme Court’s ruling in *Bank of*
18 *America*, the court agrees. *See Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113,
19 121 (Nev. 2018).

20 Under NRS 116.31166(1), the holder of a first deed of trust may pay off the superpriority
21 portion of an HOA lien to prevent the foreclosure sale from extinguishing the deed of trust. *See*
22 Nev. Rev. Stat. § 116.31166(1); *see also SFR Investments*, 334 P.3d at 414 (“But as a junior
23 lienholder, BOA could have paid off the SHHOA lien to avert loss of its security . . .”). The
24 superpriority portion of the lien consists of “the last nine months of unpaid HOA dues and
25 maintenance and nuisance-abatement charges,” while the subpriority piece consists of “all other
26 HOA fees or assessments.” *SFR Investments*, 334 P.3d at 411; *Horizons at Seven Hills*
27 *Homeowners Association v. Ikon Holdings, LLC*, 373 P.3d 66 (Nev. 2016).

1 In *Bank of America*, the Nevada Supreme Court held that a foreclosure sale did not
2 extinguish a first deed of trust when Bank of America, the holder of the deed of trust, used the
3 HOA's representations to calculate and tender the sum of nine months of delinquent assessments.
4 *Bank of America*, 427 P.3d at 121. Although the superpriority portion of an HOA lien typically
5 includes maintenance and nuisance abatement charges, the court held that "Bank of America
6 tendered the correct amount to satisfy the superpriority portion of the lien . . . [because] the HOA
7 did not indicate that the property had any charges for maintenance or nuisance abatement." *Id.* at
8 118.

9 The Nevada Supreme Court's holding in *Bank of America* controls the court's analysis in
10 this case. As in *Bank of America*, the HOA has not indicated that the property had any charges for
11 maintenance or nuisance abatement. See *Bank of America*, 427 P.3d at 118. Thus, when BOA
12 (plaintiff's predecessor in interest) sent a check for more than nine months of assessments to the
13 HOA, it properly tendered the superpriority portion of the lien.

14 Therefore, the nonjudicial foreclosure sale did not extinguish the deed of trust. See *id.* at
15 121 ("It follows that after a valid tender of the superpriority portion of an HOA lien, a foreclosure
16 sale . . . cannot extinguish the first deed of trust").

17 **IV. Conclusion**

18 In light of the foregoing, the court finds that plaintiff is entitled to judgment as a matter of
19 law on its quiet title claim, and therefore holds that plaintiff's deed of trust continues to encumber
20 the property.

21 Accordingly,

22 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's motion for
23 reconsideration (ECF No. 79) be, and the same hereby is, GRANTED.

24 IT IS FURTHER ORDERED that the court's order filed on March 23, 2018, (ECF No. 72)
25 be, and the same hereby is, VACATED.

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1 The clerk is instructed to enter judgment accordingly and close the case.

2 DATED February 11, 2019.

3 
4 UNITED STATES DISTRICT JUDGE